



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

5636 Southern Boulevard, Virginia Beach, Virginia 23462

(757) 518-2000 Fax (757) 518-2009

www.deq.virginia.gov

L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Francis L. Daniel
Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO ATC Panels, Inc.

Registration No. 60171

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and 10.1-1316, between the State Air Pollution Control Board and ATC Panels, Inc. for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the Regulations for the Control and Abatement of Air Pollution.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "ATC Panels" means ATC Panels, Inc., a Delaware corporation certified to do business in Virginia.
2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1301 and 10.1-1184.
3. "CFR" means Code of Federal Regulations.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality.

6. "Order" means this document, also known as a Consent Order.
7. "PCWP MACT" means the Federal National Emission Standards for Hazardous Air Pollutants ("NESHAPS") for the Plywood and Composite Wood Products source category, codified at 40 CFR Part 63, Subpart DDDD (§§ 63.2230 *et seq.*), that lists standards for emissions of hazardous air pollutants from affected facilities. The PCWP MACT provided for compliance for existing sources in the category by October 1, 2007 and also contained a "low-risk" subcategory that included a one year compliance extension to October 1, 2008.
8. "Regulations" mean the Regulations for the Control and Abatement of Air Pollution, located in the Virginia Administrative Code ("VAC"), 9 VAC 5-10-10 *et seq.*
9. "Permits" means the Title V Federal Operating Permit issued on December 8, 2005 and the New Source Review Permit issued on March 13, 2008 for operation of the ATC Panels, Inc. facility in Franklin, VA.
10. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
11. "Virginia Air Pollution Control Law" means the laws located in the Virginia Code ("Va. Code") (1950), as amended, Va. Code § 10.1-1300 *et seq.*

SECTION C: Findings of Fact and Conclusions of Law

1. ATC Panels owns and operates a particleboard manufacturing facility in Franklin, VA. The components of particleboard are wood chips and resin to bind the chips into a rigid panel.
2. ATC Panels is subject to the PCWP MACT. The PCWP MACT originally (effective September 28, 2004) contained a "low-risk" subcategory with a PCWP MACT compliance date (including one year compliance extension) of October 1, 2008. Reportedly, ATC Panels had analyzed emissions and undertaken air quality modeling that demonstrated compliance with the low-risk MACT standards without installation of additional control equipment.
3. However, on June 19, 2007, the U.S. Court of Appeals for the District of Columbia Circuit Court ("Court") issued an opinion to partially vacate the PCWP MACT, including elimination of the low-risk subcategory and the one year compliance extension, returning the PCWP MACT compliance date to October 1, 2007 without the low-risk subcategory. ATC Panels now is required to comply with the PCWP MACT, which ATC Panels reported will require considerable additional costs in control equipment.
4. ATC Panels initially requested a PCWP MACT compliance date extension, which the State was authorized to grant up to one additional year, pursuant to 40 CFR

63.6(i)(4)(i)(A), from October 1, 2007 to October 1, 2008. TRO air compliance notified ATC Panels of the PCWP MACT compliance date extension to October 1, 2008 by letter dated December 14, 2007.

5. Subsequently, ATC Panels reported to DEQ by letter dated June 26, 2008 that during equipment planning to meet the compliance date of October 1, 2008, it was discovered that the facility building would not support the new equipment needed for compliance with the PCWP MACT, that additions to the building structure would be required, adding several months to the time needed to install and test the new equipment. ATC Panels requested in the same letter an additional 18 months for compliance with the PCWP MACT beyond the extended PCWP MACT compliance date of October 1, 2008 that ATC Panels had been notified by TRO letter dated December 14, 2007. However, TRO will not be able to modify the Permits to provide ATC Panels the requested 18 months for compliance with the PCWP MACT.
6. ATC Panels has not completed installation and compliance testing of equipment to meet the PCWP MACT compliance date of October 1, 2008. DEQ alleges that ATC Panels violated 40 CFR 63, Subpart DDDD by not meeting the standards of the PCWP MACT.
7. ATC Panels was advised of the above noncompliance by Notice of Violation dated October 2, 2008.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1309, orders ATC Panels, Inc. and ATC Panels, Inc. agrees, to perform the actions described in Appendix A of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of ATC Panels, for good cause shown by ATC Panels, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those alleged violations specifically identified herein, including those matters addressed in the Notice of Violation issued to ATC Panels on October 2, 2008. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For the purposes of this Order and subsequent actions with respect to this Order, ATC Panels admits the jurisdictional allegations in the Order, but does not admit the factual allegations or legal conclusions contained herein.
4. ATC Panels consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. ATC Panels declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by ATC Panels to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. ATC Panels shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. ATC Panels shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. ATC Panels shall notify the TRO Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the TRO Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and ATC Panels.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to ATC Panels, or the Director or Board terminates the Order upon request from ATC Panels, ATC Panels having demonstrated that it has satisfactorily completed the tasks set forth in Appendix A of this Order. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve ATC Panels from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, ATC Panels voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 2nd day of October, 2008.

Francis L. Daniel
Francis L. Daniel

ATC Panels, Inc. voluntarily agrees to the issuance of this Order.

By: [Signature]

Date: 10-2-08

Commonwealth of Virginia

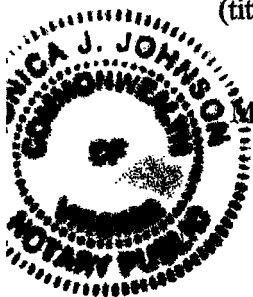
City/County of Southampton

The foregoing document was signed and acknowledged before me this 2nd day of October, 2008, by Thomas B. Gorrakon, who is
(month) (name)

Manager of ATC Panels, Inc. on behalf of ATC Panels, Inc.
(title)

[Signature]
Notary Public

My commission expires: July 31, 2010 ID# 4611616



**APPENDIX A
SCHEDULE OF COMPLIANCE**

ATC Panels, Inc. shall complete the following, and as required for compliance with the PCWP MACT:

1. By November 1, 2008, submit status report of the PCWP MACT compliance to DEQ.
2. By November 30, 2008, complete government planning and zoning review, for construction of the biofilter, applicable for the ATC Panels, Inc. facility in Franklin, VA.
2. By December 15, 2008, begin installation of biofilter.
4. By January 1, 2009, submit status report of the PCWP MACT compliance to DEQ.
5. By March 31, 2009, complete installation of the biofilter.
6. By March 31, 2009, complete evaluation and design of emissions ducting system.
7. By April 1, 2009, submit status report of the PCWP MACT compliance to DEQ.
8. By June 1, 2009, begin installation of emissions ducting system.
9. By July 1, 2009, submit status report of PCWP MACT compliance to DEQ.
10. By October 1, 2009, submit status report of PCWP MACT compliance to DEQ.
11. By December 31, 2009, complete installation of emissions ducting system.
12. By January 1, 2010, submit status report of PCWP MACT compliance to DEQ.
13. By March 31, 2010, complete shakedown and checkout of the biofilter system.
14. By March 31, 2010, comply with the PCWP MACT and relevant PCWP MACT requirements in the Permits (or successor Permits).
15. By April 1, 2010, submit status report of PCWP MACT compliance to DEQ.
16. By September 27, 2010 (within 180 days after March 31, 2010), complete testing of the biofilter system and demonstrate compliance with the PCWP MACT (reference 40 CFR §63.7(a)(2)).
17. Within 45 days of compliance testing of the biofilter system for demonstration of compliance with the PCWP MACT, provide the report of compliance testing to DEQ.
18. Mail all submittals and reports required by this Appendix A to:

Francis L. Daniel, Regional Director
DEQ, Tidewater Regional Office
5636 Southern Blvd.
Virginia Beach, VA 23462